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PREPARED BY: HAROLD D. DOWNING

STATE OF NORTH CAROLINA

COUNTY OF CUMBERLAND

GEORGE J. TATUM  
REGISTER OF DEEDS  
CUMBERLAND CO., N.C.

## THIS DECLARATION OF RESTRICTIVE AND PROTECTIVE COVENANTS AND

CONDITIONS, made and entered into this the 31st day October, 1990, by and between BILLY D. HORNE and wife, FAY J. HORNE; TOMMY A. HORNE and wife, MARGARET J. HORNE; and JUDITH W. CASHWELL and husband, JIMMY L. CASHWELL; all of Cumberland County, North Carolina; and RAY E. KECK and wife, JEAN C. KECK of Buncombe County, North Carolina, parties of the first part; and, all future owners of any of the lots shown on a plat entitled HORNE'S PLAZA, a subdivision located in the City of Fayetteville, Cross Creek Township, Cumberland County, North Carolina, parties of the second part;

## W I T N E S S E T H :

WHEREAS, the said parties of the first part has heretofore acquired title to a certain tract of parcel of land which has been subdivided according to a certain plat entitled HORNE'S PLAZA (hereinafter sometimes referred to as the "subdivision"), which said plat appears of record in the office of the Register of Deeds of Cumberland County, in Plat Book 74, Page 11, and,

WHEREAS, the said parties of the first part desire to impress certain restrictive covenants upon said lots;

NOW, THEREFORE, in order to accomplish said restrictive covenants and in consideration of the mutual benefits to the parties hereto, the parties of the first part hereby impose upon the lots in said subdivision the following restrictive covenants to run with the land:

## RESTRICTIVE COVENANTS

1. PRESENT IMPROVEMENTS: There are presently constructed on the designated property individual buildings on each separately numbered lot together with a paved parking area adjacent to each building.

2. FUTURE DEVELOPMENT. Any future development or redevelopment of any of the existing lots shown on the plat shall require a revised site plan with review and approval by the Planning Department prior to any application for a building permit, and this provision shall be binding upon all parties to this agreement and their successors in interest.

3. EASEMENTS. The parties hereto have previously entered into an easement granting to each other the perpetual right of ingress and egress over and through the areas designated Areas B and C as shown on the recorded plat. No owner of any lot in the subdivision shall do anything to prohibit the free and unlimited access of any property owner or his agents, employees, customers, invitees, or guests, over and across these designated areas.

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4. PARTY WALLS. All walls between the buildings shown on the plat shall be party walls which shall remain as a solid surface for as long as either building abutting same remain standing.

5. REPAIR AND MAINTENANCE. The costs of repair and maintenance of all party walls shall be borne equally by the owners of the building on either side thereof, except in cases where damage requiring repairs or maintenance arises from the willful or negligent conduct of the adjacent owner, or those acting for him or under his control or for whose conduct he is legally responsible. In such case, the responsible party shall bear the cost of repairs.

6. DESTRUCTION BY FIRE OR OTHER CASUALTY. If a party wall is destroyed or damaged by fire or other casualty it shall be the obligation of the adjacent property owners to rebuild the wall with one-half of the costs being paid by each party. In the event of partial or complete destruction of a building on any lot, the owners of the damaged or destroyed building covenant to restore such building to its condition prior to such damage or destruction.

7. ARBITRATION. In the event of a dispute between the owners of property in this subdivision concerning such property or these covenants, the dispute shall be arbitrated pursuant to the provisions of Section 45A of Chapter 1 of the General Statutes of North Carolina, and in such arbitration, the affected owners shall agree on an arbitrator, or if they shall fail to agree, each shall choose one arbitrator who shall then choose an additional arbitrator, and a decision made by a majority of the arbitrators shall be binding on all owners involved.

8. COMMON AREAS. This subdivision shall contain no common areas as described in the City of Fayetteville Code or in the General Statutes of North Carolina. The lots of said subdivision shall be governed by the provisions of Section 27-10(j) of the Fayetteville City Code, and the property owners may at any future date create a property owners' association for the purpose of regulating parking or other activities within the subdivision.

Should the property owners dedicate any property as common areas in the future, these covenants, together with any by-laws or instruments creating an owner's association shall be resubmitted to the Planning Board for approval in compliance with Section 27-10 of the City Code of Fayetteville, North Carolina.

9. MAINTENANCE, LIABILITY, AND IMPROVEMENT OF ENTRANCES AND PARKING AREAS. Each lot owner shall be individually and severally responsible and liable for any maintenance and improvements which may be required to entrance ways, parking lots, or service areas which may be located on each individual lot.

Each individual lot owner shall be solely responsible for any injury or damage caused by negligence or any other act or omission for which a property owner may be held responsible, and each said lot owner shall obtain any insurance required for the protection against such loss. However, nothing herein contained shall prevent lot owners from obtaining a joint insurance policy covering loss due to injury and occurring on the parking lot or within the entrance areas to the parking lot. Any agreement to participate in the purchase of joint insurance coverage shall in no way render an individual lot owner responsible for injury or damage occurring off the premises of said owner.

10. BINDING COVENANTS. These covenants are to run with the land and shall be binding on all parties and all persons having claim under them for a period of twenty-five years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of ten years until an instrument, signed by all of the then owners agreeing to change said covenants in whole or in part. Except, these covenants may be amended at any time by the agreement of all property owners, subject to any required approval by the City of Fayetteville or other governing body.

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11. ENFORCEMENT. Enforcement shall be by proceeding at law or in equity against any person or persons failing or refusing to comply with any affirmative covenant or violating or attempting to violate any covenant either to obtain compliance or to restrain violation or to recover damage, or both.

12. SEVERABILITY. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

IN TESTIMONY WHEREOF, parties of the first part have hereunto set their hands and seals the day and year first above written.

Billy D. Horne (SEAL)  
Billy D. Horne

Fay J. Horne (SEAL)  
Fay J. Horne

Tommy A. Horne (SEAL)  
Tommy A. Horne

Margaret J. Horne (SEAL)  
Margaret J. Horne

Judith W. Cashwell (SEAL)  
Judith W. Cashwell

Jimmy L. Cashwell (SEAL)  
Jimmy L. Cashwell

Kay E. Keck (SEAL)  
Kay E. Keck

Jean C. Keck (SEAL)  
Jean C. Keck

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NORTH CAROLINA  
CUMBERLAND COUNTY

I, Ira H. McDonald, a Notary Public of said County and State, do hereby certify that BILLY D. HORNE and wife, FAY J. HORNE personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal this 1st day of November, 1990.



Ira H. McDonald  
Notary Public

My commission expires: 3-11-91

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NORTH CAROLINA  
CUMBERLAND COUNTY

I, Jane H. McDonald, a Notary Public of said County and State, do hereby certify that TOMMY A. HORNE and wife, MARGARET J. HORNE personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal this 1st day of November, 1990.

Jane H. McDonald  
Notary Public

My commission expires: 3-11-91

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NORTH CAROLINA  
CUMBERLAND COUNTY

I, Larry Williams, a Notary Public of said County and State, do hereby certify that JUDITH W. CASHWELL and husband, JIMMY L. CASHWELL personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal this 31<sup>st</sup> day of October, 1990.

Larry Williams  
Notary Public

My commission expires:  
11-27-1993

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NORTH CAROLINA  
BUNCOMBE COUNTY

I, Elizabeth B. Mitchell, a Notary Public of said County and State, do hereby certify that RAY E. KECK and wife, JEAN C. KECK personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal this 31<sup>st</sup> day of October, 1990.

Elizabeth B. Mitchell  
Notary Public

My commission expires:

August 21, 1995

The foregoing Certificate(s) of Jane H. McDonald, Larry Williams  
and Elizabeth B. Mitchell  
are certified to be correct. This instrument and this certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof.

GEORGE E. TATUM REGISTER OF DEEDS FOR CUMBERLAND COUNTY,  
By Michael W. Hittington Deputy/Assistant- Register of Deeds